

RFK Defended on Wire-Tapping and Appointment of Judges in the South

The Joseph Kraft column of June 7 about Robert Kennedy did not clear away myths, as it purported to do. It perpetuated two and created a third.

I know it is now fashionable in writing about Robert Kennedy to stress wire-tapping and bad judicial appointments in the South, and not his public accomplishments. But this is inaccurate in the particular, and grossly unfair in the balance. Mr. Kraft especially should know better.

First, the primary thrust of Robert Kennedy's efforts in the area of wire-tapping was to bring that method of surveillance under judicial control, when done by state and local officials, where it was totally out of control, as well as on the federal level, where in fact relatively little tapping was authorized, and then only in matters involving kidnaping or national security narrowly defined as involving foreign intelligence or espionage. It is true that Mr. Kennedy favored the use of wire-tapping as a method of obtaining evidence against organized crime activity, but only under judicial control with full Fourth Amendment protection as in other searches and seiz-

ures. Unlike Attorney General Mitchell, he never attempted by executive action to extend the use of this technique by the FBI beyond what had been the Bureau's practice at least since Robert Jackson was attorney general.

I think it unfair to characterize this history, Mr. Kraft has done, as having "promoted wiretapping and other invasions of privacy."

Second, judges are appointed by the President, not by the attorney general. In screening the lawyers recommended by senators for appointment as judges in the South, Robert Kennedy, with my help among others, made every effort to find out in advance whether those lawyers would follow the constitutional and other civil rights rulings of the Supreme Court in racial cases. We made mistakes of judgment in that process, because of inexperience, lack of information, or overdependence on the judgment of others. But no name was ever sent from the Department of Justice to the White House with an affirmative recommendation unless the Department believed, on the whole, that the lawyer under consideration

would act fairly as a judge in civil rights cases.

I think it unfair to characterize this process, as Mr. Kraft has done, as one of deliberate appointment by Robert Kennedy of bad judges in the South "on the theory that Sen. James Eastland could be bought off."

Third, I am not qualified by personal knowledge to describe the counter insurgency study which Robert Kennedy chaired. I do know that the basic reason for it was to assess additional ways of avoiding the kind of use of United States military power in Southeast Asia, to which this country finally became committed, and which Robert Kennedy opposed. I also know from knowing Robert Kennedy as well as I have known anyone that it paints a grossly distorted picture of that sensitive, compassionate, and warm man as a "piano-wire hawk" interested in exploring methods of killing.

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